

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 96-0122 FBT
Food and Beverage Tax
For The Tax Period: 1992, 1993, and 1994

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. **Food and Beverage Tax:** Imposition

Authority: IC 6-9-12-1; IC 6-2.5-2-1; IC 6-2.5-4-1; IC 6-2.5-3-2

Taxpayer protests the assessment of food and beverage tax on the sale of food and drink.

II. **Negligence Penalty:** Imposition

Authority: 45 IAC 2.2-5-61

Taxpayer protest the imposition of a negligence penalty.

STATEMENT OF FACTS

Taxpayer sells "fast food" in restaurants across the country. Taxpayer specializes in the production of tacos and other Mexican food products. Additional facts will be provided as needed.

I. **Food and Beverage Tax:** Imposition

DISCUSSION

The city-county council of a county that contains a consolidated city may adopt an ordinance to impose an excise tax, known as the county food and beverage tax, on any transaction in which food or beverage is furnished, prepared, or served as provided by IC 6-9-12-3. IC 6-9-12-2. The same exemptions that are allowed to retail merchants under IC 6-2.5 are allowed for taxpayers that are subject to Indiana's county food and beverage tax. IC 6-9-12-4. The food and beverage tax "applies to any transaction in which food or beverage is furnished, prepared, or served." IC 6-9-12-3.

“The notice of proposed assessment is *prima facie evidence* that the department’s claim for unpaid tax is valid, and the burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.” IC 6-8.1-5-1 (emphasis added). Taxpayer has not submitted any evidence or documentation to rebut the validity of the food and beverage tax imposed on transactions in which it furnished, prepared, or served foods and beverages. Thus, the Department finds that the assessment of food and beverage tax is valid.

FINDING

Taxpayer’s protest is denied.

II. Negligence Penalty: Imposition

DISCUSSION

Pursuant to IC 6-8.1-10-2.1, taxpayer was assessed a negligence penalty for failure to remit food and beverage tax to the Department. Taxpayer argues that this deficiency was due to reasonable cause. The Department finds that taxpayer did not prove reasonable cause for the deficiency. Thus, the negligence penalty should not be waived.

FINDING

Taxpayer’s protest is denied.